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(43)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 6531 of 2006

Lochan Prasad Maravi

Versus

D.R. Deshmukh and others

ORDER

Post for: 25.07.2007

Sd/-
Sunil Kumar Sinha
Judge

AFR

(AM)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 6531 of 2006

Petitioner Lochan Prasad Maravi (ST) S/o Sagau Ram, Aged 55 Yrs., Ex-Process Writer, R/o Village – Khairi, Tah.- Takhatpur, Distt.- Bilaspur (C.G.).

Versus

Respondents

1. D.R. Deshmukh (Distt. Judge) now Additional Judge, C.G. High Court Bilaspur.
2. Union of India through Secretary, Deptt. of Law and Justice Jaisalmer House, New Delhi.
3. Registrar General, C.G. High Court Bilaspur

Appearance:

Shri Mukesh Sharma, counsel for the petitioner.

ORDER
(25.07.2007)

Sunil Kumar Sinha, J.

(1) The petitioner, who was appointed as a Process Writter in the District Court Establishment, Bilaspur and was removed pursuant to a departmental enquiry vide order No. 628/II-16-17/91 dated 14.9.1999, passed by respondent No.1 while he was working as a District and Sessions Judge, Bilaspur, has challenged the validity of elevation of respondent No.1 as an Additional Judge of the High Court of Chhattisgarh saying it to be contrary to the provisions of the Constitution of India.

(2) As stated in the petition, the petitioner belongs to Scheduled Tribe category. He makes allegations that during the year 1997, respondent No.1, while he was working as the District and Sessions Judge, Bilaspur, appointed as many as 12 employees but none of them

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belonged to SC/ST category. He pleaded that Section 4 of the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (hereinafter referred to as the Act, 1994) mandates for the reservation of 20% vacancies for ST candidate and 16 % vacancies for SC candidate in Class III and Class IV posts, but it was not followed and even against the reserve vacancy of the petitioner, respondent No. 1 illegally appointed a general candidate one Arvind Mishra vide order No. 573/2-11-3/95 Bilaspur dated 20.11.2000. He further pleaded that since there is a penal provisions under Section 6 of the aforesaid Act which provides for punishment with imprisonment which may extend to 3 months or with fine which may extend to one thousand rupees or with both against officer who violates the provisions of the Act, therefore, an action of making appointment against the roster by respondent No.1 was totally against the law but instead of taking strict action against him, his name was recommended by Hon'ble the Chief Justice and the then members of the collegiums, therefore, such elevation being against the Constitution, deserves to be quashed.

(3) During the course of arguments, learned counsel for the petitioner raised only one point. He submitted that since the action of respondent No.1, by not following the roster in the appointments made by him during the course of his tenure as the District and Sessions Judge, Bilaspur, was illegal and malafide, therefore, his case should have been considered to initiate the penal action against him but instead of doing so, the collegium recommended his name and ultimately, he was elevated as an Additional Judge of this High Court. He further argued that for quashment of the removal order of the

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petitioner and for taking such penal action as also for the purpose of enquiry through CBI, an earlier petition vide No. 884/2004 was also filed, which is pending for its disposal. In support of his arguments that respondent No.1 had violated the roster, he referred to the report of District Judge, Bilaspur dated 19th April, 2002 (Annexure-P/3), which shows the list of appointments made by respondent No.1.

(4) I have heard the learned counsel for the petitioner at length and have also perused the records of the writ petition.

(5) For appreciation, it is important to refer certain provisions of the Act of 1994. Section 6 of the aforesaid Act provides for penalty. It is quoted as under:-

> **"6. Penalty.-** (1) Any appointing authority or officer or employee entrusted with the responsibility under sub-section (1) of Section 5 who willfully acts in a manner intended to contravene or defeat the purposes of this Act shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.
>
> (2) No court shall take cognizance of a offence under this section except with the previous sanction of the State Government."

Section 3 of the Act provides for its application. For ready reference, it is also quoted as follows:

> **"3. Application of the Act.-** This Act shall apply to the establishment as defined in this Act but shall not apply to the following employments:-

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(1) any employments under the Government of India;

(2) Compassionate appointments made on account of the death of Government servants or otherwise in accordance with general orders of the Government;

(3) Posts to be filled by transfer or by deputation;

(4) Casual appointments;

(5) Appointments made to the Madhya Pradesh Higher Judicial Sevice."

(6) A bare perusal of Section 3 would show that the provisions of this Act are not to be applied to the employment of casual appointments in any establishment. The word 'Establishment' has also been defined in the Act vide clause (b) of Section 2 which says that in this Act, unless the context otherwise, requires,- "Establishment" means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a Company, Corporation or a Cooperative Society in which not less than fifty one percent of the paid up share capital is held by the State Government and includes a work charge or contingency paid establishments. However, the words 'Casual Appointments' have not been defined under the Act, therefore, a general meaning of the said words used by Legislature in sub-section (4) of Section 3 has to be derived, which would be an occasional appointment, not regular, or for a limited purpose or temporary appointment for such purpose. Therefore, if the appointments made in any establishment were of casual nature, the provisions of this Act are not to be applied.

(7) If we examine the document filed by the petitioner as Annexure-P/3 (Page 29 of the paper-book), which is a list of appointment orders issued by respondent No.1 in between 1.4.97 to 20.4.2001, which also includes the appointment order of Arvind Mishra (supra), it would appear that according to the said document, all these appointments were made as the casual appointments at that point of time as is clear from the heading of the document, which is said to be issued from the office of District and Sessions Judge, Bilaspur and the petitioner relied on it. The heading portion of the document is as follows:

> "<u>:: कार्यालय जिला एवं सत्र न्यायाधीश, बिलासपुर (छत्तीसगढ़) ::</u>
>
> श्री दिलीप देशमुख, तत्कालीन जिला एवं सत्र न्यायाधीश, बिलासपुर कार्यकाल में आकस्मिक निधि से वेतन पाने वाले कर्मचारियों, चतुर्थ/तृतीय श्रेणी कर्मचारियों की जो नियुक्तियां की गई है उनसे संबंधित आदेशों की सूची :–"

(8) Therefore, it is clear that in such appointments, the provisions of the Act, 1994, were not applicable by virtue of sub-section (4) of Section 3 of the said Act and the pleadings with regard to violation of roster and the Act leading to prosecution and penalty as per Section 6 of the Act becomes unfounded and the arguments, advanced by learned counsel for the petitioner in this regard, cannot be accepted on facts as also on the basis of their own documents.

(9) This is all as to how a petition challenging the elevation of a Judge of the High Court has been filed. It clearly appears that the petition has been filed in most negligent manner, even without properly going through the provisions of law and the pleadings have been set up

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in a casual and negligent manner. It appears that the petitioner was removed from the services, on account of a departmental enquiry, in the regime of respondent No.1, therefore, such a petition has been filed making such allegations against his elevation as a Judge of the High Court.

(10) The petition appears to be malafide, fabulous and based upon no material for the cause of action allegedly shown to have arisen in favour of the petitioner. This is not the first attempt of the petitioner, this a consecutive petition by the same petitioner making such allegations, which appears to have been filed with an ulterior motive just to malign the dignity of the high office of the Judge. The petition deserves to be dismissed and for such a fabulous petition, the petitioner shall be liable to pay cost.

(11) In the result, the petition is dismissed with a cost of Rs.10,000/- (Rupees Ten thousand), which shall be deposited by the petitioner.

Sd/-
Sunil Kumar Sinha
Judge

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